

REMARKS

Oath or Declaration

An English language copy of the Assignment and Declaration is filed herewith.

Rejections under 35 USC 103

Claims 1-4, 11-19 stand rejected as allegedly being unpatentable over Heckner et al. (Kraft et al. WO 0240578) in view of Papenfuhs et al. (WO 03/020776; US 7,358,304).

Heckner et al. (Kraft et al. WO 0240578) disclose a composition and process for producing an optically transparent, mechanically stable, elastic, thermoplastic polyvinyl acetal film containing plasticizers. The film has ion-conducting properties and can be used as an electrolyte in an electrochromic system, as an intermediate layer for a multilayer glass or in lithium ion batteries. Heckner et al. do not teach or suggest a composition containing the combination of acetals of the present invention (i.e., of formula I and II). Heckner et al. also do not teach or suggest a composition containing from 0.1 to 25 % by weight of a support electrolyte.

Papenfuhs et al. disclose high molecular weight polyvinyl butyrals suitable for the production of films and coatings. These polyvinyl butyrals contain coacetalized, acid-functionalized aldehydes that are thermoplastically crosslinkable. As a result these polyvinyl butyrals are (self-)crosslinking. In addition, the crosslinked polyvinyl butyrals are admixed with antiadhesion agents containing divalent cations, such as Mg(II) ions, without decreasing the adhesion-reducing activity of the antiadhesion agents.

On page 3 of the Office Action the Examiner points to Example 2 of Papenfuhs et al. Example 2 of Papenfuhs et al. does not teach a film having a plasticizer or a support electrolyte. The composition of Example 2 is not ion-conductive. Moreover, the Papenfuhs et al. reference is completely silent regarding the content of a support electrolyte.

As the Examiner notes on page 3 of the Office Action, Heckner et al. do not teach polyvinyl butyrate as having a co-acetate of the formula II. The Examiner asserts that a skilled worker would use the polyvinyl butyl of Papenfuhs et al. in the composition of

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Heckner to increase the solvent resistance of films made from the composition through crosslinking of the polyvinyl butyl. However, Heckner et al. do not describe a need to increase the solvent resistance of the films. Furthermore, it is not clear that the films of Heckner et al. are lacking in solvent resistance or why this would be an advantageous or desirable property for a film which is laminated between glass.

Furthermore, neither Heckner et al. nor Papenfuhs et al. disclose thermoplastic compositions containing from 0.1 to 25 % by weight of a support electrolyte. Heckner et al. teach that the amount of electrolyte is 0.1 to 5 *mol/l* dissolved in the softener portion and not 0.1 to 25 % by weight of the total composition. In Example 18, Papenfuhs et al. teach 0.0051 g of Mg 2-ethylhexanoate (0.014 % of the total combined mass). Moreover, Papenfuhs et al. teaches the Mg 2-ethylhexanoate is used as an adhesion agent, not a support electrolyte. The ionic strength of the Mg 2-ethylhexanoate is far less than the electroactive substances in which it is dissolved.

On the bottom of page 3 to the top of page 4, the Examiner alleges that a skilled worker would be motivated to optimize the weight percentage of lithium salt taught by Heckner et al. in order to increase the ion-conductivity of the foil. However, there is no mention what so ever in Heckner et al. that it would be desirable to increase the electrolyte percentage beyond the amounts taught or if it would even be effective or desirable to do so without unintended consequences such as, for example, reducing optical transparency or the long term mechanical, chemical or electrochemical stability of the film.

As can be seen in Applicant's specification at Examples 3 and 4, the electrical switching characteristics and the permanent switching stability of the electrochromic elements prepared from the ion-conductive thermoplastic composition according to the invention are measured and are demonstrated to be clearly superior over the prior art. The disclosures of Heckner et al. and Papenfuhs et al. do not suggest the advantageous permanent and/or electrical switching properties of the present invention.

The combination of references clearly fails to teach or suggest the present invention.

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Neither Heckner et al. nor Papenfuhs et al. teach or suggest an ion-conductive thermoplastic composition which comprises 0.1 to 25 % by weight of at least one support electrolyte.

Clearly, appellants' disclosure is impermissibly being used as a template to assert obviousness.

See, e.g., *In re Fritch* 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) where the court stated:

It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." This court has previously stated that "[o]ne cannot use **hindsight** reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention"

Taken together the references would in no way lead one skilled in the art to arrive at the thermoplastic composition of the present invention. It is respectfully requested that the rejection under 35 USC 103 be withdrawn.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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